

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| DARLINGTON AMADASU, | : | |
| | : | Case No. 1:01-cv-210 |
| Plaintiff, | : | |
| | : | Judge Dlott |
| v. | : | Magistrate Judge Black |
| | : | |
| JAMES R. DONOVAN, M.D., <i>et al.</i> , | : | OHIO DEFENDANTS' MEMORANDUM |
| | : | IN OPPOSITION TO PLAINTIFF'S |
| Defendants. | : | <u>MOTION FOR DEFAULT JUDGMENT</u> |

Defendants The University of Cincinnati ("UC") James R. Donovan, Andrew G. Freeman, Debra Ann Middaugh, Muriel Pohl, Dora Jefferson-Gaynor, Ralph Charles Buncher, Judy L. Jarrell, Tracy Herrman, James Lockey, and Andrew T. Filak (collectively "the Ohio Defendants") oppose the Plaintiff Darlington Amadasu's ("Plaintiff") motion for default judgment (Doc. 66). As Plaintiff is well aware, this Court has not granted the required leave for filing what would be Plaintiff's second amended complaint.

This Court's September 17, 2003 Order (Doc. 50) directed the Clerk to docket Plaintiff's First Amended Complaint, with service required only on the original defendants. Plaintiff had previously tendered that First Amended Complaint to the Court as an attachment to a motion seeking leave to file it. On October 1, 2003, the Ohio Defendants timely answered the First Amended Complaint (Doc. 52).

Under the explicit terms of Federal Rule of Civil Procedure 15, Plaintiff must obtain consent of his opposition or leave of court before filing a second amended complaint in this situation. In relevant part, the rule states:

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. **Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party;** and leave shall be freely given when justice so requires. . . .

Fed. R. Civ. P. 15(a) (emphasis added). Plaintiff neither sought, nor was granted, consent from the Ohio Defendants to amend his complaint yet again. To the knowledge of the Ohio Defendants, the Texas Defendants likewise have not granted their consent.

Thus, Plaintiff can file a second amended complaint only with leave of this Court. His own "Motion for Filing Plaintiff's Amended/Supplemented Complaint With Joinder of Claims & Persons" -- i.e., what would be his second amended complaint -- acknowledges as much on its face, as Plaintiff seeks "an order directing the filing" of the second amended complaint. (Doc. 63) To date, no such order has been entered. The Ohio Defendants timely opposed Plaintiff's motion for leave (Doc. 65), and they now reassert the reasons discussed in that opposition brief for why no such order should ever be entered.

For all of these reasons, the proposed second amended complaint is before the Court only as an attachment to Plaintiff's pending motion for leave to file it. Only if the Court grants such leave will the Ohio Defendants be obligated to file another answer. Plaintiff's default motion is contrary to the express terms of Rule 15(a) and has needlessly increased the cost of defending

against his already labyrinthine claims. The Ohio Defendants are in default of nothing, and the motion should be denied in its entirety.

Respectfully submitted,

James Petro, Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing using the CM/ECF system and served copies upon Darlington Amadasu, Plaintiff Pro Se, at P.O. Box 6263, Cincinnati, Ohio 45206, and upon Ramiro Canales, counsel for Claudia Miller, Roger Perales, and the University of Texas Health Science Center at San Antonio, at Assistant Attorney General for the State of Texas, General Litigation Division, P.O. Box 12548, Capitol Station, Austin, TX 78711-2548 via regular United States mail, postage prepaid, this 1st day of October, 2004.

James Petro, Attorney General

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